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HB 2137 - H AMD 224 Adopted 3-19-91

2 By Representatives Wang, Holland, Fraser, Wynne

3 Strike everything after the enacting clause and insert:

4 "Sec. 1. RCW 82.64.010 and 1989 c 271 s 505 are each amended
5 to read as follows:

6 Unless the context clearly requires otherwise, the definitions
7 in this section apply throughout this chapter.

8 (1) "Carbonated beverage" has its ordinary meaning and
9 includes any nonalcoholic liquid intended for human consumption
10 which contains carbon dioxide, whether carbonation is obtained by
11 natural or artificial means.

12 ~~(2) ("Possession" means the control of a carbonated beverage~~
13 ~~or syrup located within this state and includes both actual and~~
14 ~~constructive possession. "Actual possession" occurs when the~~
15 ~~person with control has physical possession. "Constructive~~
16 ~~possession" occurs when the person with control does not have~~
17 ~~physical possession. "Control" means the power to sell or use a~~
18 ~~carbonated beverage or syrup or to authorize the sale or use by~~
19 ~~another.~~

20 ~~(3))~~ "Previously taxed carbonated beverage or syrup" means a
21 carbonated beverage or syrup in respect to which a tax has been
22 paid under this chapter. A "previously taxed carbonated beverage"
23 includes carbonated beverages in respect to which a tax has been
24 paid under this chapter on the carbonated beverage or on the syrup

1 in the carbonated beverage.

2 ((+4)) (3) "Syrup" means a concentrated liquid which is added
3 to carbonated water to produce a carbonated beverage.

4 ((+5)) (4) Except for terms defined in this section, the
5 definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this
6 chapter.

7 **Sec. 2.** RCW 82.64.020 and 1989 c 271 s 506 are each amended
8 to read as follows:

9 (1) A tax is imposed on ~~((the privilege of possession))~~ each
10 sale at wholesale of a carbonated beverage or syrup in this state.
11 The rate of the tax shall be equal to eighty-four one-thousandths
12 of a cent per ounce for carbonated beverages and seventy-five cents
13 per gallon for syrups. Fractional amounts shall be taxed
14 proportionally.

15 (2) A tax is imposed on each sale at retail of a carbonated
16 beverage or syrup in this state. The rate of the tax shall be
17 equal to the rate imposed under subsection (1) of this section.

18 (3) Moneys collected under this chapter shall be deposited in
19 the drug enforcement and education account under RCW 69.50.520.

20 ((+3)) (4) Chapter 82.32 RCW applies to the taxes imposed in
21 this chapter. The tax due dates, reporting periods, and return
22 requirements applicable to chapter 82.04 RCW apply equally to the
23 taxes imposed in this chapter.

24 **Sec. 3.** RCW 82.64.030 and 1989 c 271 s 507 are each amended

1 to read as follows:

2 The following are exempt from the taxes imposed in this
3 chapter:

4 (1) Any successive (~~possession~~) sale of a previously taxed
5 carbonated beverage or syrup. (~~If tax due under this chapter has
6 not been paid with respect to a carbonated beverage or syrup, the
7 department may collect the tax from any person who has had
8 possession of the carbonated beverage or syrup. If the tax is paid
9 by any person other than the first person having taxable possession
10 of a carbonated beverage or syrup, the amount of tax paid
11 constitutes a debt owed by the first person having taxable
12 possession to the person who paid the tax.~~)

13 (2) Any carbonated beverage or syrup that is transferred to a
14 point outside the state for use outside the state. The department
15 shall provide by rule appropriate procedures and exemption
16 certificates for the administration of this exemption.

17 (3) (~~Any possession of a carbonated beverage or syrup where
18 the first possession occurred before July 1, 1989~~) Any sale of
19 trademarked carbonated beverage or syrup by any person to a person
20 who is licensed by the owner of the trademark to manufacture,
21 distribute, or sell such trademarked carbonated beverage or syrup.

22 (4) Any sale of carbonated beverage or syrup in respect to
23 which a tax on the privilege of possession was paid under this
24 chapter before the effective date of this act.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.64
2 RCW to read as follows:

3 (1) The tax imposed in RCW 82.64.020(1) shall be paid by the
4 buyer to the wholesaler and each wholesaler shall collect from the
5 buyer the full amount of the tax payable in respect to each taxable
6 sale, unless the wholesaler is prohibited from collecting the tax
7 from the buyer under the Constitution of this state or the
8 Constitution or laws of the United States. Regardless of the
9 obligation to collect the tax from the buyer, the wholesaler is
10 liable to the state for the amount of the tax. The buyer is not
11 obligated to pay or report the tax imposed in RCW 82.64.020(1) to
12 the department.

13 (2) The tax required to be collected by the wholesaler shall
14 be stated separately from the selling price in any sales invoice or
15 other instrument of sale.

16 (3) Any wholesaler who fails or refuses to collect tax under
17 this section, with intent to violate the provisions of this chapter
18 or to gain some advantage or benefit, either direct or indirect, is
19 guilty of a misdemeanor.

20 (5) The amount of tax required to be collected under this
21 section shall constitute a debt from the buyer to the wholesaler
22 until paid by the buyer to the wholesaler.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.64
24 RCW to read as follows:

1 (1) Each retailer at a retail store with a sales and storage
2 area totaling more than four thousand square feet may:

3 (a) Include in all print advertising of carbonated beverages
4 a notice with the statement specified in subsection (2) of this
5 section.

6 (b) Post shelf notices with the statement specified in
7 subsection (2) of this section. Shelf notices shall be provided by
8 the wholesaler, and shall be posted by the wholesaler or the
9 retailer next to each price label on the carbonated beverage
10 shelves of the retail store.

11 (2) Each notice under this section shall state: "Price
12 includes (amount) Washington Drug Fund Tax." In the notice,
13 "(amount)" shall be replaced with the specific amount of the tax
14 imposed under this chapter upon the quantity of carbonated beverage
15 for which the price is stated.

16 (3) This section does not apply to the sale, advertising, or
17 shelf display of:

18 (a) Syrups;

19 (b) Carbonated beverages sold through vending machines;

20 (c) Carbonated beverages dispensed into open containers;

21 (d) Carbonated beverages sold by a wholesaler who is
22 prohibited under RCW 66.28.010 from having a direct or indirect
23 financial interest in any retail business.

24 NEW SECTION. **Sec. 6.** The taxes imposed in this act

1 are intended to raise revenue for the enforcement of the drug laws
2 of the state. It is the policy of the state to actively combat the
3 problem of drug abuse by aggressive enforcement of the state's drug
4 laws and by extensive promotion of public education programs
5 designed to increase public and consumer awareness of the state's
6 drug problem and its enforcement measures. Pursuant to this
7 policy, the retailers and wholesalers subject to the provisions of
8 this chapter are authorized and encouraged to agree on procedures
9 for posting notices under section 5 of this act.

10 **Sec. 7.** RCW 82.64.040 and 1989 c 271 s 508 are each amended
11 to read as follows:

12 (1) Credit shall be allowed, in accordance with rules of the
13 department, against the taxes imposed in this chapter for any
14 carbonated beverage or syrup tax paid to another state with respect
15 to the same carbonated beverage or syrup. The amount of the credit
16 shall not exceed the tax liability arising under this chapter with
17 respect to that carbonated beverage or syrup.

18 (2) For the purpose of this section:

19 (a) "Carbonated beverage or syrup tax" means a tax:

20 (i) That is imposed on the (~~act or privilege of possessing~~)
21 the sale at wholesale of carbonated beverages or syrup and that is
22 not generally imposed on other activities or privileges; and

23 (ii) That is measured by the volume of the carbonated beverage
24 or syrup.

1 (b) "State" means (i) a state of the United States other than
2 Washington, or any political subdivision of such other state, (ii)
3 the District of Columbia, and (iii) any foreign country or
4 political subdivision thereof.

5 NEW SECTION. **Sec. 8.** The amendatory sections and
6 repealers of this act shall not be construed as affecting any
7 existing right acquired or liability or obligation incurred under
8 those sections as they existed before this act or under any rule or
9 order adopted under those sections, nor as affecting any proceeding
10 instituted under those sections.

11 NEW SECTION. **Sec. 9.** This act is necessary for the
12 immediate preservation of the public peace, health, or safety, or
13 support of the state government and its existing public
14 institutions, and shall take effect June 1, 1991."

15 **SHB 2137** - H AMD

16 By Representative Wang

17 On page 1, line 2 of the title, after "82.64.020," strike
18 everything through "82.64.040" on line 3 and insert "82.64.030, and
19 82.64.040; adding new sections to chapter 82.64 RCW; creating new
20 sections"

EFFECT: Clarifies exemption for licensed bottlers. Changes
effective date from July 1 to June 1, 1991. Makes several
technical changes.